

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NO. 2019-239-E**

In the Matter of:

Dominion Energy South Carolina, Inc.'s  
Request for Approval of an Expanded  
Portfolio of Demand Side Management  
Programs and a Modified Demand Side  
Management Rate Rider

**DOMINION ENERGY SOUTH  
CAROLINA, INC.'S  
MOTION TO STRIKE LATE FILED  
HEARING EXHIBIT 5**

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Dominion Energy South Carolina, Inc. ("DESC" or the "Company"), by and through its undersigned counsel and pursuant to S.C. Code Ann. Regs. 103-829, hereby submits this Motion to Strike Late Filed Hearing Exhibit 5 (the "Late Filed Exhibit") of Elizabeth Chant prepared in response to a request from Commissioner Ervin at the hearing in this matter. It was submitted to the Public Service Commission of South Carolina ("Commission") by the South Carolina State Conference of the NAACP, the South Carolina Coastal Conservation League, and the Southern Alliance for Clean Energy (the "Joint Interveners") on November 19, 2019. As set forth herein, the Commission should strike the Late Filed Exhibit because it goes far beyond the scope of Commissioner Ervin's request and so represents an improper attempt to insert into the record of this proceeding matters not contained in prefiled testimony before the Commission.

Contemporaneously with this Motion, DESC is filing its Response to the Late Filed Exhibit as provided for during the hearing on this matter. In responding to the Late Filed Exhibit, DESC does not concede that the breadth of the Late Filed Exhibit or inclusion of any of the points contained therein is lawful or proper.

## ARGUMENT

In past proceedings, the Commission has requested late-filed exhibits to provide specific, factual information of a limited nature that could supplement the record of a proceeding without unduly prejudicing the rights of other parties. As a general matter, unless they are strictly limited to the provision of specific factual information of a limited nature, late-filed exhibits can make it difficult or impossible for parties to assess and respond to the claims made by other parties, prepare testimony, confront witnesses, and cross-examine witnesses on disputed matters. Overly broad late-filed exhibits can violate other parties' due process rights pursuant to the Fifth and Fourteenth Amendments to the United States Constitution; Article I, Section 22 of the Constitution of the State of South Carolina; and the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310 *et seq.*

In this proceeding, the Commission asked Ms. Chant to submit a set of new proposals for energy efficiency programs to address winter peak and to also suggest specific new incentives to motivate investment in those specific programs. This gave the Joint Interveners an unprecedented opportunity to supplement their prefiled and oral testimony after the close of the hearing. But ignoring the limits on the request made, and to the great prejudice of other parties, Joint Interveners have submitted an exhibit proposing:

1. Direct load control programs that were in no way responsive to the request for energy efficiency measures;
2. A mandatory process for creation and stakeholder review of new and unspecified energy efficiency programs during early 2020;
3. Mandatory submission of the resulting programs to the Commission for approval by May 1, 2020;

4. Mandatory new annual reporting requirements related to those programs;
5. New and factually unsubstantiated targets for achieving overall energy efficiency savings from the DSM portfolio;
6. Requirements that these targets be satisfied for any shared savings incentive to be earned; and
7. A new, mandatory requirement that a suite of revised programs be submitted for Commission approval if in any year the new and factually unsubstantiated targets proposed were not met.

In effect, Ms. Chant has used the opening afforded by the request for a late-filed exhibit to submit a new, comprehensive structure for DSM that has not been previously provided to the other parties in this proceeding and has not been subject to discovery, responsive testimony and cross examination. This is clearly improper and a violation of the due process and Administrative Procedure Act rights of DESC and other parties. In light of the procedurally improper nature of the filing, the appropriate response would be to strike the Late Filed Exhibit in its entirety. DESC specifically requests that the Commission do so.

Alternatively, the Commission should strike all of the Late Filed Exhibit except for Section 2.1, which lists five specific energy efficiency programs. This part of the filing is the only section directly responsive to Commissioner Ervin's request. No proposal for incentives specifically tied to these five programs, however, is contained in the Late Filed Exhibit. As will be pointed out in DESC's substantive response to the Late Filed Exhibit, the five suggested programs are largely duplicative of programs and measures already included in DESC's proposed suite of DSM offerings as set forth in the Potential Study and DESC's prefiled testimony. Most of them were contained in the measures list provided to the Energy Efficiency

Advisory Group over a year ago and subject to review and comment at that time. These points are discussed more fully in the substantive response to Ms. Chant's late filed exhibit.

### **CONCLUSION**

Based on the foregoing, DESC respectfully requests that the Commission strike the Late Filed Exhibit from the record of this proceeding as beyond the scope of the request by Commissioner Ervin and in violation of the constitutional and due process rights of the parties.

Respectfully submitted,

/s/Belton T. Zeigler

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Cayce, South Carolina  
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